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REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA OF THE FIFTIETH SESSION

REVIEW OF THE ROLE OF THE TRUSTEESHIP COUNCIL

Letter dated 2 June 1995 from the Permanent Representative of Malta to the United Nations addressed to the Secretary-General

I have the honour to request, on behalf of the Government of Malta, in accordance with rule 13, paragraph (e), of the rules of procedure of the General Assembly, the inclusion of an item entitled "Review of the role of the Trusteeship Council" in the provisional agenda of the fiftieth session of the General Assembly.

In accordance with rule 20 of the rules of procedure, an explanatory memorandum concerning my Government's request is attached hereto (see annex).

(Signed) Joseph CASSAR
Ambassador
Permanent Representative

95-17987 (E) 230695 260695

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ANNEX

Explanatory memorandum

1. The commemoration of the fiftieth anniversary of the United Nations presents a timely opportunity to enhance the effectiveness and the relevance of the Organization in the lives of the peoples its represents. A second-generation United Nations must face the challenges of change also in the functioning of the principal organs of the United Nations system set up 50 years ago.

2. The Trusteeship Council has served, and is still serving, its purpose in terms of the Charter. However, its very success in bringing to nationhood so many countries and peoples previously under trust has diminished its role.

3. During the forty-fifth session, the President of the United Nations General Assembly, Prof. Guido de Marco, launched and advanced the idea that, in addition to its role under the Charter, the Trusteeship Council should hold in trust for humanity its common heritage and its common concerns (see appendix).

4. On 25 May 1994, the Trusteeship Council adopted an amendment to its rules of procedure (resolution 2200 (LXI)) establishing that the Council would henceforth meet as and where occasion might require by its decision or that of its President, or at the request of a majority of its members, or of the General Assembly or at the request of the Security Council acting in pursuance of the relevant provisions of the Charter of the United Nations.

5. It is the belief of the Government of Malta that the role of the Trusteeship Council can be enhanced to that of trustee of the common heritage of humankind.

6. Awareness of the need to incorporate a trans-generational perspective into deliberations by the international community has led to the adoption of a number of conventions, which incorporate within them different and distinct aspects related to the safeguard of the common heritage.

7. The Trusteeship Council can become the focal point for coordination of endeavour in these related areas of common heritage, thus warding the interest of present and future generations against dispersal of effort and fragmentation. Such a measure would be consistent with other initiatives to promote efficiency and effectiveness within the United Nations system.

8. The Government of Malta, therefore, proposes the inclusion of an item entitled "Review of the role of the Trusteeship Council", in the agenda of the fiftieth session to give Member States of the United Nations the opportunity to explore ways in which the role of the Trusteeship Council may be adjusted to meet the needs of present-day realities.

APPENDIX

Transforming the role of Trusteeship Council

(Pro memoria on the proposal launched by the Deputy Prime Minister and Minister for Foreign Affairs of Malta, Prof. Guido de Marco, during his tenure of the Presidency of the General Assembly at its forty-fifth session)

Guardian and trustee of the global commons and the common concerns

The commemoration of the fiftieth anniversary of the United Nations presents a timely opportunity and obligation to enhance the effectiveness and the relevance of the Organization in the lives of the billions of peoples it represents. A second-generation United Nations must face the challenges of change also in the functioning of the organs of the system set up 50 years ago.

Prof. Guido de Marco served as President of the General Assembly at its forty-fifth session, from September 1990 to September 1991. It was during his term of office that he first launched the idea of transforming the role of the Trusteeship Council, which in addition to its role under the Charter, should hold in trust for humanity its common heritage and common concerns. 1/

The proposal was introduced at a time when the international community was being released from the grip of the cold war, a time of opportunity to reflect on the Organization created to avoid the scourge of war. It was then becoming clearer to all that notions of security no longer stemmed solely from military considerations. The meting out of resources at present and in the future, the sustainability of the environment, the promotion of human rights and safeguard of peoples in situations of complete breakdown of the States all constitute challenges in future.

The United Nations is mandated to ensure that present and future generations benefit from and enjoy peace in freedom. This worthy goal necessitates flexibility in the functioning of the United Nations system. It requires review and revitalization of existing organs so as to enable it to be pro-active rather than re-active. The United Nations needs to be viewed as a complex adaptive system, which without renouncing its original ideals and basic purposes can respond adequately and promptly to contemporary needs. 2/

Amongst these is Malta's proposal to transform the Trusteeship Council from a guardian of dependent territories to a body that acts as guardian and trustee of the global commons and the common concerns in the interest of present and future generations.

The common heritage of mankind

The concept of the common heritage, first launched by Malta at the United Nations in 1967, has today acquired universal acceptance, which has led to its incorporation in a number of international conventions. The very concept of the

common heritage of mankind, revolutionary when first launched, remains an appealing one even today. It is a concept that brings contemporary notions of space and time together. More importantly, it provides an inherent link to the past as well as an intrinsic passage to the future, thus providing a new dynamic that helps overcome a static world view.

The notion of the heritage provides the logic necessary for wider parameters in the assessment of the here and now. It has stimulated a world vision that no longer concentrates solely on present-day situations but transcends selfish concerns and looks also to what lies beyond our immediate human condition. It is proof of the inter-generation solidarity we all strive for in the creation of truly dignified humanity. The raw material of which the concept of common heritage is made is trust.

The concept of trust emanates from a concept in English common law and is fiduciary in nature, reflecting the mission of the League of Nations and later the United Nations in so far as certain territories were concerned. This concept needs to be applied to new realities, with the United Nations holding in trust for humanity its common heritage and common concerns. 2/

The preservation of the environment

The preservation of the environment is now recognized as an objective of the work of the United Nations. Though not alone in the consolidation of this trend, Malta's contribution in its promotion has been significant. Malta's role in 1967, in raising international awareness on common heritage as applicable to the seabed, the ocean floor and the subsoil thereof underlying the high seas beyond the limits of national jurisdiction, is now part of history.

Twenty-one years later, during the forty-third session of the United Nations General Assembly, Malta played a very important part in bringing to the fore what is probably the most serious environmental concern humanity has ever had to face - the problem of climate change. The adoption of General Assembly resolution 43/53 of 6 December 1988, which characterized climate change as a common concern of mankind, focused world attention on the problem of global warming and climate change. A record number of meetings world wide followed this resolution, culminating in the United Nations Framework Convention on Climate Change.

In August 1989, Malta requested the inclusion in the provisional agenda of the forty-fourth session of the General Assembly of a supplementary sub-item, under item 83, entitled "Environmental protection of extraterritorial spaces for present and future generations".

The recommendation focused on the identification and extent of extraterritorial spaces, the rights and duties of States and the international community therein, the possible strengthening of relevant existing legal instruments and the effective and comprehensive environmental protection of such spaces. A draft resolution was formally introduced in the Second Committee of the General Assembly on 20 November 1989, after which it was examined during

informal consultations in one of the Working Groups of the Committee chaired by one of its Vice-Chairmen.

In its decision 44/451 of 22 December 1989, the General Assembly, on the recommendation of the Second Committee, decided to take no action on the draft resolution "at the present time", thus leaving the door open for future consideration of the Maltese initiative. The failure of the Assembly to adopt a text on this important subject was, fortunately enough, mitigated by an important development in the International Law Commission and in the Preparatory Committee for the United Nations Conference on Environment and Development.

The Special Rapporteur, Prof. Julio Barboza, in his sixth report deals extensively and in detail with the liability for harm to the environment in areas beyond national jurisdiction - which Malta had described in its proposal to the United Nations as "extraterritorial spaces". Yet another development was the text being considered for discussion in the United Nations Conference on Environment and Development relating to the sustainable use and conservation of the high seas living resources.

It was in this context that the Deputy Prime Minister and Minister for Foreign Affairs of Malta, Prof. Guido de Marco, as President of the General Assembly at its forty-fifth session, proposed the reform of the Trusteeship Council as the body most appropriate to act as trustee of the global commons in the interest of future generations. This reform was part of the overall revitalization process necessary to generate a second-generation United Nations.

This proposal was then expounded to various diplomatic and academic audiences in a series of lectures on "A Second-Generation United Nations" delivered between April and June 1991 at the University of Genoa, the Moscow Dilee Diplomatic Academy, the Beijing Foreign Affairs College, the Institute of Political Studies, Turin, and the Carolinum of Charles University, Prague.

> "The Charter of the United Nations provides for the Trusteeship Council. To its credit, most of the peoples under trustee administration have practically all acquired their independence. However, the Council can still serve an even more beneficial role in the contemporary world. I feel that with a slight correction, this body can be made to function for the common weal of man. I suggest that from an administrator of territories, this Trusteeship Council be converted into a guardian and supervisor of the common heritage of mankind. The resources of the sea and of the seabed, the climate, the environment - particularly the protection of extraterritorial zones - and the rights of future generations, all these priceless possessions of humanity invoke the creation of such a Council if they are to be handed down to future generations." 3/

During this period, when Malta was diffusing this concept, some members of the International Law Commission later that same year in addressing the issue of harm to the global commons had acknowledged the problem of continuous deterioration of the human environment as a serious matter with universal implications that needed to be addressed by the Commission and suggested that the mandate of the Trusteeship Council could be extended to cover the protection of the resources of the global commons. 4/

In a statement on the report of the International Law Commission during the forty-sixth session of the General Assembly, Prof. David Attard, on behalf of the Government of Malta, welcomed the Commission's comments, stating that such an idea had been proposed by the Government of Malta to extend the mandate of the Council in the suggested direction. 5/

In the same manner, the Government of Malta today welcomes the report of the Commission on Global Governance, "Our Global Neighbourhood", which, amongst other proposals regarding the reform of the United Nations system, contains a section on the possible reform of the Trusteeship Council, which, in essence, reflects the proposals expounded by Prof. de Marco during his presidency of the forty-fifth session of the General Assembly, and consistently since, namely:

> "The Trusteeship Council should be given a new mandate over the global commons in the context of concern for the security of the planet."

A timely opportunity

The commemoration of the fiftieth anniversary of the United Nations provides a timely opportunity to transform the Trusteeship Council into a body that safeguards the interests of future generations by enhancing its mandate to include the common heritage of mankind; entrusting the Council with oversight relative to conventions incorporating the concept of a common heritage of mankind; granting to the Council a coordinating role in the international community's efforts, particularly in promoting human rights and safeguarding peoples in situations of complete breakdown of the State.

At present a number of areas considered part of the common heritage and/or common concerns are covered by conventions and General Assembly resolutions, among them, the seabed and ocean floor; climate change; biodiversity; outer space; and the environment. These areas are entrusted to a number of distinct international institutions, amongst which are the International Seabed Authority, the Intergovernmental Panel on Climate Change, the Commission for Sustainable Development, the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP).

> "These units work independently, in an almost completely uncoordinated fashion. Though each aspect requires specific attention, the intrinsic linkage between these different issues demands unison in effort. The concept of common heritage requires a coordinated approach. A change in one cog affects the functioning of the whole. Interrelation cannot be ignored. A scenario of institutional fragmentation can only be avoided through the establishment of an oversight mechanism relative to those areas which we hold in trust for future generations. Rather than reinventing the wheel, Malta is proposing a transition and evolution in the role of the Trusteeship Council." 6/

Since the withdrawal of Australia at the end of 1975, the Council has comprised one administering Power (United States of America) and four non-administering Powers (China, France, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland). The last

territory under the trusteeship system was the Trust Territory of the Pacific Islands. On 22 December 1990, by its resolution 683 (1990), the Security Council agreed to the termination of the trusteeship in respect of three of the four component parts of the Trust Territory of the Pacific Islands, namely, the Federated States of Micronesia, the Marshall Islands, and the Northern Mariana Islands. Following the November 1993 plebiscite in which the people of Palau freely exercised their right to self-determination, the Trusteeship Agreement of this last remaining Territory under the trusteeship system came to an end.

On 25 May 1994, the Trusteeship Council adopted an amendment to its rules of procedure (resolution 2200 (LXI)) establishing that the Council would henceforth meet as and where occasion might require by its decision or that of its President, or at the request of a majority of its members, the General Assembly or the Security Council. The Secretary-General, in his report on the work of the Organization, 7/ has recommended that the General Assembly proceed with steps to eliminate the Trusteeship Council in accordance with Article 108 of the Charter, which provides for amendments to the Charter to be made by a two-thirds majority of the General Assembly, including the permanent members. Before proceeding with such a recommendation, it is Malta's belief that worthy alternatives need to be considered, amongst which is the recommendation to transform and evolve the mandate of the Trusteeship Council, entrusting it with the responsibility of safeguarding the common heritage of mankind.

At the Inter-Parliamentary Union Conference held in September 1994, Malta proposed the holding of a conference mandated to discuss the concept of trusteeship as it relates to the common heritage of mankind. Later this year Malta intends to follow up its proposal for the transformation of the mandate of the Trusteeship Council with a formal request for inclusion of a relevant item in the work of the fiftieth session of the General Assembly.

Solidarity of the human family

"We believe in a second-generation United Nations, as a major stepping stone to peace and security. A more humane United Nations, not built on conflicting power blocs, but stimulating regional organizations, building round multipolar interdependent areas.

"To preserve peace and stability, Malta proposes the transformation of the Trusteeship Council from one looking after dependent territories, to a vigilant Council, to safeguard the common heritage of mankind and to keep in trust for humanity the environment and rights of future generations, aware of the common concerns and common interests, built on the solidarity of the human family.

"A process of peace to combat poverty, illiteracy, underdevelopment, misery and hunger." 8/

Notes

1/ See A/45/PV.82.

2/ See A/49/PV.13.

3/ From a statement delivered at the University of Genoa, Italy, on 12 April 1991 by Prof. Guido de Marco.

4/ See Official Records of the General Assembly, Forty-third Session, Supplement No. 10 (A/46/10).

5/ See A/C.6/46/SR.30.

6/ From a lecture on "Reforming the Trusteeship Council" given to the European Law Students Association in Malta in October 1994 by Prof. de Marco.

7/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 1 (A/49/1).

8/ From a statement delivered by Prof. de Marco on 30 January 1995 at Floriana, Malta, at the International Symposium "50 Years, Malta-Yalta-Malta: A Process of Peace".